

## **REMARKS**

Reconsideration is respectfully requested for the Examiner's characterization of this current Office Action as being a Final Office Action. It is respectfully submitted that the characterization of this Office Action as being a Final Action is premature and is not supported by the facts.

The Examiner, on the one hand, has acknowledged that claims 1-4, 6-10 and 22-23 were not amended in the response to the Office Action dated September 26, 2007. On the other hand, the Examiner concludes in paragraph eleven (11) of this current Office Action that the Applicant's Amendment necessitated the new grounds of rejection presented in this Office Action.

Moreover, Claim 1 and Claim 22, the only independent claims in this application, each calls for the generation based upon the prescriptive history of a selected purchaser, one or more patterns which can be used to flag the possibility of drug abuse. In paragraph seven (7) and eight (8) of the current Office Action, the Examiner acknowledges, "Cunningham does not disclose that the one or more patterns from the prescriptive history would indicate prescription duplication, or a multi-source prescription abuse."

In light of the fact that the Examiner acknowledges that the Cunningham '780 reference and the Borsand et al '225 reference do not teach or suggest the generation of one or more patterns which are indicative of prescription drug abuse, there does not seem to be any support for the concept that the previous amendment filed by the Applicant necessitated the characterization of this previous amendment as necessitating the new grounds of rejection presented in

this Office Action. It is therefore respectfully submitted that the finality of this Office Action should be withdrawn.

Consideration is respectfully requested for Claims 1-4, 6-10 and 23-24, said claims having been variously rejected as follows:

Claims 1-4 and 6 have been rejected under 35 USC 103 as being unpatentable over the Cunningham '780 patent in view of the Borsand et al '225 reference, on the same basis as given in the previous Office Action. This rejection is respectfully traversed.

In paragraph nine (9) of this present Office Action, which covers page five and page six, the Examiner refers to column two, lines 55-59 of Cunningham, the statement that "Cunningham discloses that in order to help combat prescription fraud, new systems must be developed that allow prescription drugs to be tracked such that appropriate reporting may be performed about the dispensation of prescription drugs. This statement of Cunningham has absolutely nothing to do with the present invention. If one looks carefully at the Cunningham reference, it is directed pure and simple to a system, which keeps a person from obtaining more than the authorized number of refills. It does not generate any patterns – it simply keeps someone from obtaining additional refills once the authorized number has been reached. This is a system like that used in every pharmacy in this country. For example, the doctor may provide a patient with a prescription showing six refills. Once the six refills have been accomplished, the patient has to go back to the doctor. That is not what this invention is about. The Examiner's statement that "in addition, Cunningham's tracking of refills is clearly

a way of determining a possibility of prescription abuse," is anything but a way of determining such abuse.

This present invention is directed to something much greater than merely monitoring the prescription history of the patient. This present invention, and its two independent Claims 1 and 22, each calls for the generation of patterns which can be observed to provide indicia of drug abuse. This is an important advance in the history and the future of preventing drug abuse in this country. The Examiner has repeated her rejection of Claims 1-4 and 6 for the same reasons as set forth in the previous Office Action but these rejections are based upon error. There is no teaching in either Cunningham or Borsand et al, calling for generation of patterns indicative of drug abuse.

Claims 7-10 have also been rejected under 35 USC 103 as being unpatentable over Cunningham in view of Borsand et al, and further in view of the Munoz '760 reference. The same reasons as set forth above with respect to Claim 1, upon which Claims 7-10 are dependant, likewise distinguish Claims 7-10 over the sighted references. The Munoz '760 patent clearly shows that just like Cunningham and Borsand et al, the Munoz patent has no teaching, disclosure or even suggestion of generating patterns from the prescription history of drug abuse. The Munoz reference merely provides an electronic system to properly identify the drug being dispensed and to properly identify the patient. (See paragraph 0014 on page 2) A careful reading of the Munoz reference fails to provide any teaching or suggestion of generating patterns within the

computerized system which could possibly identify fraud or misuse of prescribed medicines.

Finally, the Examiner has rejected Claim 23 under 35 USC 103 as being unpatentable over Cunningham and the newly cited reference Edelson et al 5,737,539. With respect to paragraph seven (7) of the present Office Action, it is again reiterated that Cunningham does not disclose one or more patterns from the medical history which would indicate prescription abuse. The Examiner alleges that Edelson discloses that one or more "patterns" from the prescriptive history would indicate prescription duplication or prescription abuse.

It is quite clear that the Edelson '539 patent has no such disclosure or even a suggestion. The Examiner's attention is respectfully directed to the Title of the '539 patent and also to the first line of the Abstract. This same language is also found in every one of the claims of the Edelson '539 patent. There is no question that what is contemplated by the '539 patent was a good invention in replacing manual prescriptions which are typically handwritten and easily misread by any pharmacy in attempting to read the physician's handwriting. However, there is no teaching or suggestion of using a central computerized system capable of generating from a given patients prescriptive history one or more patterns to flag the possibility of prescriptive drug abuse. Edelson '539 patent does not describe patterns of any sort. As a consequence, the combination of Edelson '539 with three other references which likewise do not generate such patterns, such as Cunningham '780, Borsand et al '225 and

Munoz '760, do not result in the called for language of generating patterns indicative of prescription abuse, as called for in the independent Claims 1 and 22.

Perhaps more importantly, however, Claims 1 and 22 each calls for method steps which selectively transfer pharmaceutical computer data through computer connections to a group of entities (the plurality of entities being affiliated and unaffiliated pharmacies in the case of Claim 1) and a group of entities consisting essentially of a plurality of hospitals, a plurality of doctors, and at least one government agency (in the case of Claim 22).

There are absolutely no teachings or suggestion of this selective transferring of this data to such plurality of entities, in either the Edelson reference, or the Cunningham reference, or the Borsand et al reference, or the Munoz reference.

The Applicants therefore respectfully submit that Claims 1-4, 6-10 and 22-24, as currently amended are patentable over the cited art of record and it is respectfully requested that these claims be allowed and that the application be advanced to issue.

Respectfully Submitted,

Date

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